

2005 Senate Bill 530

Date of enactment: **May 10, 2006**  
Date of publication\*: **May 24, 2006**

## 2005 WISCONSIN ACT 389

AN ACT *to amend* 346.65 (2) (b), 346.65 (2) (c), 346.65 (2j) (b), 346.65 (2j) (c), 346.65 (3m) and 973.11 (1) (intro.); and *to create* 346.65 (2) (bm), 346.65 (2) (cm), 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (3r) and 346.65 (8) of the statutes; **relating to:** drunken driving and creating a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 346.65 (2) (b) of the statutes is amended to read:

346.65 (2) (b) Except as provided in ~~par. pars. (bm)~~ and (f), shall be fined not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 2.** 346.65 (2) (bm) of the statutes is created to read:

346.65 (2) (bm) In Winnebago County, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (b), but the period of imprisonment shall be not less than 5 days, except that if

the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

**SECTION 3.** 346.65 (2) (c) of the statutes is amended to read:

346.65 (2) (c) Except as provided in pars. ~~(cm)~~, (f), and (g), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 4.** 346.65 (2) (cm) of the statutes is created to read:

346.65 (2) (cm) In Winnebago County, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

shall be the same as under par. (c), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 10 days. A person may be sentenced under this paragraph or under par. (bm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

**SECTION 5.** 346.65 (2j) (b) of the statutes is amended to read:

346.65 (2j) (b) Except as provided in ~~par. pars. (bm) and~~ (d), shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspension, and revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

**SECTION 6.** 346.65 (2j) (bm) of the statutes is created to read:

346.65 (2j) (bm) In Winnebago County, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (b), but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

**SECTION 7.** 346.65 (2j) (c) of the statutes is amended to read:

346.65 (2j) (c) Except as provided in ~~par. pars. (cm) and~~ (d), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations, counted under s. 343.307 (2), equals 3 or more.

**SECTION 8.** 346.65 (2j) (cm) of the statutes is created to read:

346.65 (2j) (cm) In Winnebago County, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 3 or more, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (c), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a

period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 10 days. A person may be sentenced under this paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

**SECTION 9.** 346.65 (3m) of the statutes is amended to read:

346.65 (3m) ~~Any~~ Except as provided in sub. (3r), any person violating s. 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02.

**SECTION 10.** 346.65 (3r) of the statutes is created to read:

346.65 (3r) In Winnebago County, any person violating s. 346.63 (2) or (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 15 days. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02. A person may be sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his or her lifetime.

**SECTION 10m.** 346.65 (8) of the statutes is created to read:

346.65 (8) There shall be a pilot project in Winnebago County providing for alternative penalties under this section, which penalties shall be as specified in subs. (2) (bm) and (cm), (2j) (bm) and (cm), and (3r).

**SECTION 11m.** 973.11 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

973.11 (1) PLACEMENTS. (intro.) If a person is convicted of or pleads guilty to no contest to one or more misdemeanors for which either mandatory periods of imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm) or (cm), (2j) (bm) or (cm), or (3r), if the chief judge of the judicial administrative district has approved a volunteers in probation program established in the applicable county, and if the court decides that volunteer supervision under the program will likely benefit the person and the community and subject to the limitations under sub. (3), the court may withhold sentence or judgment of conviction and order that the person be

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placed with that volunteers in probation program. A person's participation in the program may not be used to conceal, withhold, or mask information regarding the judgment of conviction if the conviction is required to be included in a record kept under s. 343.23 (2) (a). Except as provided in sub. (3), the order shall provide any condi-

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tions that the court determines are reasonable and appropriate and may include, but need not be limited to, one or more of the following:

### **SECTION 12. Initial applicability.**

(1) This act first applies to violations that are committed on the effective date of this subsection.